

AMENDED IN SENATE APRIL 13, 2010

AMENDED IN SENATE MARCH 25, 2010

SENATE BILL

No. 1188

Introduced by Senator Wright

February 18, 2010

~~An act to add Division 24 (commencing with Section 90000) to the Financial Code, relating to debt settlement. An act to add Section 3049 to the Family Code, relating to child custody.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1188, as amended, Wright. ~~Debt settlement organizations. Child custody: disabled parent.~~

Existing law requires a court to award custody of a child according to the best interest of the child, and further requires a court to grant reasonable visitation rights to a parent unless it is shown that the visitation would be detrimental to the best interest of the child. Existing law requires a court, when determining the best interest of the child, to consider the health, safety, and welfare of the child, among other factors.

This bill would provide that there is a rebuttable presumption affecting the burden of proof that a parent's disability may not form the basis for an order granting child custody or visitation to another party, or for an order imposing a condition or limitation on custody or visitation, as specified, unless that other party establishes by clear and convincing evidence that an award of custody or visitation to, or a condition or limitation on custody or visitation by, the disabled parent would be detrimental to the health, safety, and welfare of the child, as specified.

~~Existing law, the Check Sellers, Bill Payers and Proraters Law, provides for licensure and regulation by the Commissioner of~~

Corporations of persons engaged in, among other activities, the business of receiving money as an agent of the obligor for the purpose of paying bills, invoices, or accounts for the obligor.

~~This bill would make it unlawful for a person to provide debt settlement services, as defined, unless it, among other things, obtains and maintains insurance coverage, as specified, and files a form establishing proof of this required insurance coverage with the Commissioner of Corporations along with a filing fee, to be established by the commissioner. The bill would require a debt settlement organization, prior to providing debt settlement services, to enter into a specified written contract with an individual, including, but not limited to, a full and detailed description of the debt settlement services to be performed by the debt settlement organization as well as the estimated date or length of time by which the services are to be performed, and a notice of the right to cancel. The bill would prohibit a debt settlement organization from, among other things, imposing any fees or charges or receiving any money for debt settlement services until the individual agrees in writing to those fees or charges and the plan, as defined. The bill would also specify how those fees or charges are to be determined and when they may be collected. The bill would exempt various entities from these provisions. The bill would specify that a violation of these provisions would constitute unfair competition and would authorize any injured individual to bring an action to enjoin and restrain any violation of these provisions and to recover damages. The bill would make these provisions operative on January 1, 2012.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~-no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3049 is added to the Family Code, to
2 read:
3 3049. In any proceeding to determine child custody or visitation
4 under this part, in which at least one parent is disabled as defined
5 by the Americans with Disabilities Act of 1990 (42 U.S.C. Sec.
6 12101 et seq.), there is a rebuttable presumption affecting the
7 burden of proof that the disability of that parent may not form the
8 basis for an order granting custody or visitation to another party,
9 or for an order for imposing any condition or limitation on an
10 award of custody to or visitation by the disabled parent, unless

1 *that other party establishes by clear and convincing evidence that*
2 *a grant of custody or visitation to, or a condition or limitation on*
3 *custody or visitation by, the disabled parent would be detrimental*
4 *to the health, safety, and welfare of the child. This section applies*
5 *to any proceeding regarding custody or visitation, including, but*
6 *not limited to, a request for a modification of an existing order for*
7 *custody or visitation.*

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10 **All matter omitted in this version of the bill**
11 **appears in the bill as amended in the**
12 **Senate, March 25, 2010. (JR11)**
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